

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 36

19STCV12592

WILLIAM JAMES MITCHELL vs TWIN GALEXIES, LLC

September 28, 2023

8:30 AM

Judge: Honorable Wendy Chang
Judicial Assistant: A. Rodriguez
Courtroom Assistant: A. Aguilar

CSR: Alexander Joko, CSR # 12272
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Anthony J. Ellrod via LACC

For Defendant(s): David Ali Tashroudian via LACC

NATURE OF PROCEEDINGS: Hearing on Motion to Compel Production; Hearing on Motion for Protective Order; Non-Appearance Case Review Re: Request for Additional Jurors

Pursuant to Government Code sections 68086, 70044, and California Rules of Court, rule 2.956, Alexander Joko, CSR # 12272, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

The matter is called for hearing.

The Court has read and considered the moving papers, opposition and evidence.

The Court gives its oral tentative ruling and hears argument from counsel.

After consideration of all documents filed and oral argument, the Court adopts the tentative as the order of the Court as follows:

Motion for OSC re Contempt for Violation of Protective Order

I. Analysis

A. Notice

The motion was timely served and filed. (Code Civ. Proc. § 1005(b).)

The Court notes that the hearing on this motion is designated as a motion for protective order. However, despite this incorrect designation, the Court will consider the merits of Plaintiff's motion for contempt.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 36

19STCV12592

WILLIAM JAMES MITCHELL vs TWIN GALEXIES, LLC

September 28, 2023

8:30 AM

Judge: Honorable Wendy Chang
Judicial Assistant: A. Rodriguez
Courtroom Assistant: A. Aguilar

CSR: Alexander Joko, CSR # 12272
ERM: None
Deputy Sheriff: None

B. Motion for Order to Show Cause Re: Contempt

“(a) The following acts or omissions in respect to a court of justice, or proceedings therein, are contempts of the authority of the court: . . . (5) Disobedience of any lawful judgment, order, or process of the court.” (Code Civ. Proc. § 1209(a)(5).) “When the contempt is not committed in the immediate view and presence of the court or judge, a warrant of attachment may be issued to bring the person charged to answer, or, without a previous arrest, a warrant of commitment may, upon notice, or upon an order to show cause, be granted” (Code Civ. Proc. §1212.)

“The facts essential to establish jurisdiction in the contempt proceeding are: (1) the making of the order, (2) knowledge of the order, (3) ability of the accused to render compliance, and (4) willful disobedience of the order.” (Application of Ny(1962) 201 Cal.App.2d 728, 731.) “All elements of charged contempt must be averred in affidavit of accuser and must be developed in the proofs.” (Id.) The party seeking to have a person held in contempt has the burden of proving the ability to comply beyond a reasonable doubt. (Application of Liu(1969) 273 Cal.App.2d 135, 141-42; In re Cassil(1995) 37 Cal.App.4th 1081, 1087.)

Plaintiff seeks an order to set an Order to Show Cause Re: Contempt against Defendant on the grounds are that Defendant violated the Protective Order by providing the deposition transcript to a third party which was marked as confidential.

Plaintiff’s counsel provides that Plaintiff’s deposition was taken on January 9, 2023, stenographically and via video recording by U.S. Legal. During the deposition, Plaintiff’s attorney Anthony J. Ellrod marked portions of the deposition as “Confidential.” After the deposition, Defendant did not object to the designation as required by the protective order. (Ross Decl. ¶ 4.) The Ross Declaration also provides that Defendant’s counsel violated the protective order by disseminating a full and complete copy of Plaintiff’s deposition transcript and video recording to third parties. (Id. ¶¶ 5-6.)

In opposition, Defendant’s counsel provides an affidavit attesting to the following: (1) No part of Plaintiff’s deposition was marked confidential pursuant to the parties’ stipulated protective order (Tashroudian Decl. ¶ 6); (2) A portion of the audio recording was played for Plaintiff and he and his attorney thought the audio recording was actually of a phone call between Plaintiff and David Race. [See Exhibit 1 (Mitchell Depo., 233:8-241:3).] Plaintiff’s counsel designated the deposition as “attorney’s eyes only” and “confidential” going forward. [Id.] More of the audio recording was played and Plaintiff eventually recognized that he gave the interview in the audio recording in 2018 in Atlanta during the Southern Fried Gaming Expo. [Id.] Plaintiff’s counsel thereafter removed the “attorney’s eyes only” designation but maintained his confidential

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 36

19STCV12592

WILLIAM JAMES MITCHELL vs TWIN GALEXIES, LLC

September 28, 2023

8:30 AM

Judge: Honorable Wendy Chang
Judicial Assistant: A. Rodriguez
Courtroom Assistant: A. Aguilar

CSR: Alexander Joko, CSR # 12272
ERM: None
Deputy Sheriff: None

designation until he could” investigate whether or not it’s an illegal recording.” [Exhibit 1 (Mitchell Depo., 237:12-24).] Plaintiff’s counsel said that he would “remove the designation if it’s appropriate” and “[i]f it needs to be un-designated I’ll un-designate it.” [Exhibit 1 (Mitchell Depo., 238:1-17).] (Id. ¶ 8); (3) About twenty minutes after Exhibit JJ was introduced, after more of the audio recording was played for Plaintiff, and after a break in the deposition, Twin Galaxies’ counsel met and conferred about the deposition being marked confidential and Plaintiff’s counsel responded “[y]eah, I’ll take that – withdraw that now.” [See Exhibit 1 (Mitchell Depo., 255:14-256:7).] (Id. ¶ 9); (4) From the time Exhibit JJ was introduced, to the time Plaintiff’s counsel withdrew his confidential designation, Plaintiff testified regarding: (1) a Hello Kitty TV provided to Carlos Pineiro; (2) him appearing on stage at the Museum of Pinball in Banning, California with Carlos Pineiro; (3) who he lodged with in Banning, California; (4) who paid for Carlos Pineiro’s flight to California; (5) his declaration in this case; and (6) a telephone conference call with Jace Hall and several members of Plaintiff’s team, including Plaintiff himself. [See Exhibit 1 (Mitchell Depo., 241:4-255:13).] (Id. ¶ 10); and (5) I have reviewed every version of Mr. Mitchell’s deposition transcript and the video thereof and no part of Plaintiff’s deposition transcript or the video bears a confidential legend. (Id. ¶ 11.)

Plaintiff has not supported his reply with affidavits rebutting Defendant’s account of events. The parties present conflicting arguments, but Plaintiff fails to satisfy his burden in providing evidence of Defendant’s failure to comply with the protective order since Defendant has shown that those materials which were disclosed to third parties were not marked as confidential.

Accordingly, Plaintiff’s motion for an order of contempt against Defendant is denied.

C. Monetary Sanctions

Both parties request sanctions. The Court finds that Plaintiff is not entitled to sanctions since he is not the prevailing party. The Court also finds that Defendant is not entitled to sanctions since it fails to show that the instant motion is completely without merit, and in bad faith, since it appears that at least a portion of the deposition was marked as confidential at one point (although Plaintiff’s counsel allegedly agreed to remove that designation).

II. Conclusion

The Motion for Order HOLDING DEFENDANT AND DEFENDANT’S COUNSEL IN CONTEMPT; REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF \$7,560.00 filed by William James Mitchell on 09/06/2023 is Denied. and DENIES parties’ requests for sanctions.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 36

19STCV12592

WILLIAM JAMES MITCHELL vs TWIN GALEXIES, LLC

September 28, 2023

8:30 AM

Judge: Honorable Wendy Chang
Judicial Assistant: A. Rodriguez
Courtroom Assistant: A. Aguilar

CSR: Alexander Joko, CSR # 12272
ERM: None
Deputy Sheriff: None

Motion for Terminating Sanctions, Motion to Compel Further Responses to RFP, Motion to Compel Second Deposition of Plaintiff

In these motions, Defendant seeks: (1) to dismiss Plaintiff's complaint as a terminating sanction; (2) to compel further responses and production of the documents requested in requests for production numbers 231, 251, 265, and 293 in set III of its requests; (3) to require Plaintiff to sit for deposition and pay the expenses; and (4) for monetary sanctions against Plaintiff and his counsel Anthony J. Ellrod and the firm Manning & Kass in the amount of \$81,875.00. These are three motions; Defendant files one, without paying separate filing fees. Still further, a review of the motion for terminating sanctions reveals that it is a premature and improper motion in limine at best, and that it seeks a dispositive ruling from this Court on critical issues of disputed facts that likely need to be addressed by a jury. The Court denies the motions without prejudice to a properly filed motion in limine, or to be addressed in another form, during the immediate pretrial phase of this case. Trial is scheduled for trial on November 17, 2023, just about a month and a half from now.

The motion to compel further responses to RFP lacks either a supporting separate statement or concise outline in lieu of a separate statement. The court denies the motion, for failure to comply with California Rule of Court Rule 3.1345.

Finally, as to the motion to compel a second session of the Deposition of Plaintiff, Defendant has not supported its request with legal authority. The motion is denied.

The Court ORDERS Defendant to pay to the Clerk of the Court \$120.00, constituting the two additional filing fees that he attempted to bypass by this improperly filed and formatted multi-motion. The sanctions shall be paid within 15 days.

Plaintiff is to give notice.

Certificate of Mailing is attached.